

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held on Wednesday May 26, 2004, at Stoney Creek Inn, 1100 Imperial Ave., Mosinee, Wisconsin. The meeting was called to order at 8:30 a.m. All May Board Agenda business was conducted by the Full Board. The meeting adjourned at 5:30 p.m.

PRESENT: Gerald W. O'Brien, Chair
Howard D. Poulson, Vice Chair
Jonathan P. Ela, Secretary
Herbert F. Behnke
Christine Thomas
John Welter
Stephen Willett

ORDER OF BUSINESS

1. Minutes to be approved.
- 1.A. Full Board Minutes of April 28, 2004.
Mr. Behnke MOVED, seconded by Mr. Poulson approval of the Full Board Minutes of April 2004, as presented. The motion was carried unanimously all members.
- 1.B. Full Board Minutes from May 10, 2004 Conference Call.
Mr. Ela MOVED, seconded by Mr. Poulson approval of the Full Board Minutes of May 2004 Conference Call, as presented. The motion was carried unanimously all members.
- 1.C. Agenda for May 26, 2004.
Mr. Behnke MOVED, seconded by Mr. Ela approval of the May 26, 2004 Agenda, as presented. The motion was carried unanimously all members.
2. Ratification of acts of the Department Secretary.
- 2.A. Real estate transactions.
Mr. Willett MOVED, seconded by Mr. Poulson approval of the Real Estate Transactions. The motion was carried unanimously all members.
3. Operating Committees.
- 3.A. Air, Waste and Water/Enforcement Committee.
- 3.A.1 Minutes. There were no Committee minutes for April 2004 since all agenda items were taken up during the Full Board Meeting.
- 3.A.2. Adoption of ch. 50 regarding a change in the snowmobile directional arrow and a housekeeping change.
Larry Freidig, Financial Assistant Specialist, Bureau of Community Financial Assistance stated the change was due to the difficulty of distinguishing the difference between the 6"x 6" trail reassurance blazer and the 9"x 9" directional arrow, both orange in color and diamond shape. The new directional arrow will be a 6"x12" yellow/black rectangle with the arrow symbol.

Ms. Thomas MOVED, seconded by Mr. Willett approval of adoption of ch. 50 regarding a change in the snowmobile directional arrow and a housekeeping change. The motion was carried unanimously all members.
- ~~3.A.3. Adoption of Board Order LE 40-03, Snowmobile Sound Rule and Public Hearing Report. (Karl Brooks and Richard Lanpheer, 15 minutes)~~ **DEFERRED**
- 3.A.4. Adoption of revisions of Ch. NR 118, WI Adm. Code, standards and criteria for the Lower St. Croix National Scenic Riverway.

Russ Rasmussen, Director, Bureau of Watershed Management stated the revision to this rule has been a long process. There is controversy surrounding this rule. We are trying to reach a balance with this rule.

Dave O'Malley, Program and Planning Analyst, Bureau of Watershed Management explained the Lower St. Croix history. It was designated as a national scenic riverway in 1972. It requires special protection under the National Wild Rivers Act. The first master plan that outlines the protections was first outlined in 1976 master plan. NR 118 was developed in 1980 to implement the plan. The goals of revision are to implement the intent and goals of the 2002 cooperative management plan, update the rule to provide more clarity and flexibility and to allow improvement of properties while protecting the character of the riverway. The planning process is a Cooperative Management Plan process that began in 1996. It is a joint effort with the National Park Service (NPS), Minnesota and Wisconsin planning team, and land use advisory group. The key elements of the rule are introduction of riverway management zones, bluffline and river setbacks, non-conforming structure regulations, mitigation standards, application requirements, and veto authority. The riverway management zones include river town, small town, small town historic, rural residential, and conservation.

Mr. Ela asked what is the significance between the federal zone and the state zone.

Mr. O'Malley stated in a federal zone, the federal government owns more land and have more management responsibilities. The federal government has more authority on the northern half. He explained the bluffline and river setbacks. The bluffline performance standards are not in the existing code. The structure doesn't protrude above bluffline as viewed from mid-river, structure is not located in slope preservation zone, structure uses earth-toned and non-reflective materials, structure is visually inconspicuous.

Mr. Ela asked if this concept of allowing a smaller bluffline setback is new or a cooperative management standard.

Mr. O'Malley stated this is something new that the state of Wisconsin developed.

The existing non-conforming structure regulation is based on the 50% rule. The proposed regulation is to allow unlimited ordinary maintenance and repair and expansion allowed if setback 50 feet from OHWM and up to 1500 square feet footprint. Reconstruction is allowed on the existing foundation. If the foundation needs to be replaced it must be moved back to meet the setback standards.

Mr. O'Brien asked if you are going to expand a structure, can you put in a new foundation.

Mr. O'Malley stated yes if you are expanding to this minimum.

Mr. Ela asked if this is new or in the existing master plan.

Mr. O'Malley stated yes this is a change to the existing rules, under the old rules, it would have been the 50% rule.

Mr. Behnke asked why an existing foundation would have to stay if it's a bad foundation. Why couldn't a new foundation be built in the footprint of the old foundation?

Mr. O'Malley stated it is a legal issue with non-conforming structures because someday it is going to have to be in a conforming location. Our attorneys advise us that it's not legal to allow them to build in the same location.

Mr. Behnke asked what is not legal about it.

Mr. Rasmussen stated that we have been advised that if you have a particular setback and if you are building a new structure you have to abide by that setback. At some point if you have a conforming location on your lot, you need to take the non-conforming structure and move it to the conforming location.

Mr. Willett asked if that is a regulatory or statutory requirement.

Mr. Rasmussen stated it is constitutional.

Marcia Penner, DNR attorney stated it is a zoning ordinance. Structures should comply with zoning regulations. The structures are legal until you do something with them.

Mr. Willett asked who says that, the DNR or the legislature.

Ms. Penner stated there are arguments about equal protection. The statutes say that counties may have a 50% rule or other type of limit to regulate non-conforming structures and the reconstruction or expansion of them. The attorney general's opinion is that there must be some regulations of non-conforming structures or you're defeating the purpose of zoning ordinances. There is

unfairness for people who basically rebuild their house in non-conforming location versus someone who is building a new structure that must comply with the setback rules.

Mr. Willett asked who determined that? The purpose of the zoning ordinance is the orderly planning and development of the community. But people who already exist do not need to conform. Where did the opinion come that they couldn't remain if they were already there?

Ms. Penner stated it is in the statutes, the attorney general's opinion, case law and general zoning law.

Mr. O'Brien asked why should someone who buys a new lot have to build further back than someone who lives on a lot with an existing structure.

Mr. Willett stated it is an issue of existing property right that will be changed by the government retrospectively, non-conforming isn't the correct term, it's pre-existing.

Mr. Behnke asked what does it mean to say that reconstruction is allowed with mitigation.

Mr. O'Malley stated the mitigation standards apply when reconstructing or expanding a structure or doing major construction alteration. The property owner would need to make the structure visually inconspicuous such as planting trees and shrubs, making the whole structure earth toned colors and non-reflective, and controlling run-off. It is a condition of the reconstruction.

Mr. Poulson asked what if the structure is non-compliant and the foundation is bad, can we help that person come into compliance or is that not possible.

Ms. Penner stated that if someone has a non-conforming structure and the foundation has to be replaced, generally they could build on a conforming area of the property.

Mr. O'Malley stated the ordinary high water mark is used statewide to determine setback standards. Minnesota uses 675 feet from the river's edge. Mitigation standards are not in the existing rule, but will be triggered by reconstruction, expansion, or structural alteration. The idea is that when these changes are made to structures, the buffer near the shore area within 50 feet of ordinary high water mark (OHWM) must be preserved. Structures must be visually inconspicuous or rendered so through planting and screenings and use of earth tone colors.

Mr. Willett asked since when does the department decide what color someone's home should be.

Mr. O'Malley stated it comes out of the Cooperative Management Plan. It makes a big difference.

Ms. Penner stated our authority comes from Wild and Scenic Rivers Act and the Lower St. Croix River Act, which are federal laws. There is also a state law 30.27, which requires us to enhance and protect beauty of the river. It is not the most controversial part of this rule.

Mr. Willett stated it is controversial in NR 115 because people don't want to be told that their shore stations need to be brown. Someone may want it to be blue or white.

Mr. Behnke stated when we talk about Northern Wisconsin, the eye of the beholder is we would like to see nature. It is an issue that we should pay attention to.

Mr. Ela stated let's keep this in the context of the rule. It's not about one color being more attractive than another color, it's about a color aiding to the visual inconspicuous of the structures.

Mr. O'Brien stated we have an obligation to protect the natural resource and scenic beauty is a natural resource.

Mr. O'Malley stated there weren't a lot of public comments in opposition of the color requirement. The Department is trying to streamline application requirements because there are so many things covered by this rule. Streamline it to be pertinent to the size and scope of the project. The Department will not retain the veto authority in the rule for variances and conditional uses, the Department will retain authority for review and approval of ordinances and amendments.

Mr. Ela stated the rule contains standards for conditional uses, a variance is different. He asked what controls the standard for a variance that would allow someone to go to court.

Ms. Penner stated that the variances may be granted if you have no reasonable use of your property. There is a statutory standard about unnecessary hardship standard that if it's too difficult to use the land for its intended purpose then someone may be granted a variance.

Mr. Ela asked how does this form better relationships with local governments if you are threatening to sue them.

Ms. Penner stated that sometimes we would have to sue anyway.

Mr. O'Brien asked if there is still a requirement to give the Department notice of all variances.

Ms. Penner stated yes.

Mr. Rasmussen stated we are trying to achieve a balance between private property rights and public trust. The goal is to keep it a scenic river. The staff was trying to achieve the goals and

principles laid out in the comprehensive management plan, which included earth-toned colors. To clarify for rule NR 115, earth tones is just a mitigation option and it is in draft form. It is far from firm proposal.

Mr. Welter stated the NPS has suggested they are concerned about the proposed rules leading to the Department to give up their objection authority. He asked if this rule waive the department's authority to object to particular ordinances.

Mr. Rasmussen stated no because we have statutory authority.

Mr. Ela asked if there was any middle ground explored between veto authority and backing away from it all together.

Mr. Willett stated he thought that's what is being proposed in this rule. It stated that the Department will review each situation and if they feel that it's inappropriate they will participate and if necessary, litigate.

Mr. Rasmussen stated that the Department was trying to achieve a better working relationship with the local communities. The veto authority was a dark cloud over the cooperative relationships.

Mr. Ela stated that local government should handle this, but if it doesn't work, the rule should be modified promptly because the St. Croix Riverway is a state and federal natural resource.

Robert Rolly, Troy, Town of Troy and Lower St. Croix Riverway Management Commission stated the new rule proposals are an improvement. However, we need to find a way to allow the field staff to be allowed to operate properly rather than be manipulated by legal presence. The only issue we have is the non-conforming structures. We suggest that you allow non-conforming structures in the river way that are more than 75 feet from the water, aren't on a slope, visual inconspicuous, 40 feet from the bluff line, and mitigation filed against their deed, then they are conforming.

Doug Rowen, Hudson, representing self and 100% of the residents of section W-14 in Troy, stated we request the NRB does not approve the draft NR 118 until it is revised to allow homes that existed prior to the Scenic Riverway Act to be repaired, maintained, and retained, including the foundations. We request that the NRB would quickly approve a new version of NR 118 so that we can enhance our ability to manage this important resource.

Francis Ogden, River Falls, Citizens for Responsible Zoning and Landowner Rights stated he recommend that the Board table this item until your June or August 2004 meeting. He would like a committee of residents and direct them to work with Department staff one more time to reach a compromise.

Mr. O'Brien asked how many meetings have you attended that has resulted in the St. Croix Riverway Plan.

Mr. Ogden stated he has attended all of them and local unit of government meetings.

Mr. O'Brien asked how is one more committee going to solve the problem.

Mr. Ogden stated if we don't resolve it here, we have to address the joint committee for the review of administrative rules of the Natural Resources. We would like to resolve and fine tune the rule at this level. We understand the variables more than the Department staff because of all the administration changes.

Mr. Behnke asked how many points in NR 118 are you concerned about. Are you in general agreement with the rule.

Mr. Ogden stated one basic issue is the non-conforming structures and all the variables included there. However, there is also the veto authority and the inconsistencies between Wisconsin and Minnesota.

Mr. Ela asked if we were to pass this rule and the joint committee suspends it, the existing rule would have application for the indefinite future. Is that a preferable outcome for you?

Mr. Ogden stated no that is the last resort. We would like to resolve it at this level.

Ron Carlson, Lake St. Croix Beach, MN, Sierra Club stated they object to 18 changes in the rule. The overall effect of the rule changes is opening up of opportunities of more development and redevelopment along the riverway. Please object to the rule proposal.

Howard Glenna, River Falls, representing himself stated the regulation placed on these properties, when this park was established made many properties non-conforming. The properties made non-conforming by the NR 118 regulations are treated as if they are not supposed to exist.

The document is front of you does not represent what most landowners who went to those meetings expected. Do not approve this document in its current state.

Mr. O'Brien asked do you have specific changes you would like to see.

Mr. Glenna stated he would like to see changes to the high water mark issue and what it does to the setbacks. It should be the same as Minnesota. These structures were legally built many years ago and it's not appropriate to make these structures illegal. Allow rebuilding including the foundation.

Paul Montgomery, Prescott, representing himself stated the foundations must be retained as part of the non-conforming structure. When litigating high water mark, movable stakes have become real daggers. Wisconsin must adopt the Minnesota mark of 675'.

Paul Mosby, River Falls, St. Croix Landowner Association and the Town of Clifton stated the most unacceptable point of the draft rule is the repeated attempt to get rid of non-conforming structures. He would like to see Wisconsin use the river's edge rather than the ordinary high water mark as a setback standard.

Mr. Willett asked if NR 118 doesn't pass, would you prefer to revert back to the old NR 118.

Mr. Mosby stated you have the authority to make changes in this draft rule revision.

Mr. Willett asked what changes would you like to see.

Mr. Mosby stated he would like to change the foundation and high water mark proposal.

Mr. Ela stated the original passing of Wild Rivers Act was aimed toward creating a relationship between Minnesota, Wisconsin and NPS. This Board must try to comply with the original legislation.

Mr. Mosby stated that most of the rivers in the act are in Alaska.

Karl Neumeier, Somerset, representing himself and Summerset Township stated the most important thing is in 2001 the NRB came out with a definition for non-conforming structure. "A non-conforming or substandard structure may be expanded if (1) the addition is visually inconspicuous, (2) steps are taken to mitigate for visual impact, adverse water quality and natural resources (3) the addition neither creates a new non-conformity nor increases the degree on existing non-conformity.

Carl Braunreiter, Prescott, representing himself stated the rules don't support the recreational uses of the Riverway. He believes there are many micro-management practices that should not be allowed. The concept of mitigation proposed in these rules is taking and forbidding by our constitution. Do any of you understand that no broadcast spraying for weed control means no weed and feed in the yards of \$500,000 plus homes? The rules regarding staircases leave a lot to be desired for safety.

Mr. Willett asked is it your desire that we do nothing.

Mr. Braunreiter stated the Department should outsource this operation to a neutral organization because the Department isn't capable of doing it.

Bill Clapp, Scandia, MN, St Croix River Association stated the rule should be adopted as drafted except for two changes. One change is the issuance of variances.

Mr. Willett stated it's my interpretation that the Department preserves their right to review and have the authority to intercede if they feel it's inappropriate.

Mr. Clapp stated that the DNR must require the variances. The second item is the non-conforming structures. Add sentence to the provisions "Another conditional use is the alteration of non-conforming structures."

Dave O'Malley stated there could be conditional use review. It requires a hearing and it costs more to do that. We could write that into the rule, but that's another step in the process.

Ms. Thomas asked if it's a permitted use then the zoning administrator has the authority to decide. Will the criteria for the bureaucrat be clear enough so that the decision is easily made?

Mr. O'Malley stated it's clear and the information provided to the zoning administrator needs to be clear.

Joe Boles, River Falls, Pierce County St. Croix River Partnership distributed the Pierce County ordinance that amended their St. Croix River Ordinance about a year ago. The Department approved this amendment. It provides for reconstruction and expansion of non-conforming structures. It allows for expansion of a structure by up to 50% of structures footprint at the time it became non-conforming, to a maximum of 1500 square feet. Such expansions could only be away

from the river and could not result in the structure being more visually conspicuous. This should be adopted in NR 118.

Mr. Willett asked if the corporation counsel for Pierce County participated in NR 118 process.

Mr. Boles stated yes, they were at all the land management meetings and the county board meetings. The land management office just received this proposal in the last couple of weeks. There were members in Pierce County that were involved throughout the process.

Mr. Ela asked how Pierce County could have passed this ordinance under the old NR 118 because it seems to be non-conformant to state code.

Ms. Penner stated that was right after Act 153 was passed. Cities and villages could have 50% rule or they could be treated the same as counties by regulating non-conforming structures in another way.

Mr. Willett asked what happens to Pierce County if we pass this rule.

Mr. O'Malley stated that Pierce County would have to pass an ordinance that is not less restrictive than this and probably adopt this.

Ms. Thomas asked why didn't we go that way the way Pierce County went.

Ms. Penner stated that when we got into more detail and more restrictions because we were writing a large rule package. Pierce County was only writing a rule for non-conforming structures.

Mr. O'Malley stated the biggest difference is the slope preservation and the requirements of preservation of the foundation.

Dennis Darnold Hudson, City of Hudson Community Development Director stated that the bluff line definition is not clear enough. There has to be an elevation established for the ordinary high water mark. Non-conforming structures should be able to be rebuilt on a new foundation.

Scott Hiltgen, River Falls, St. Croix Landowners Association stated the landowners are the stewards of the river. There is no single source of government to go to for information because there are 35 governing agencies that have control over land along the St. Croix River. As a landowner, where do you go? There is no single source to get information from.

Mr. Ela asked if you would like the existing rule.

Mr. Hiltgen stated the difficulty of that question is choosing the lesser of the two evils.

Denny Caneff, Madison, River Alliance stated that the DNR giving up their veto right over variances and conditional uses might cause more inconsistencies. He urged the Board to maintain the DNR's veto authority.

Mr. Willett states that he appreciates the Alliance, but doesn't agree with them. The local governments are great stewards and it's not wrong to put authority in their hands.

Joe Merchak, River Falls, representing himself stated that there are a group of single family homes that are non-conforming because they are located on a slope over 12%. These homes cannot be expanded. A slope of 12% is very conservative.

Mr. Willett MOVED, seconded by Mr. Ela approval of adoption of revisions of Ch. NR 118, WI Adm. Code, standards and criteria for the Lower St. Croix National Scenic Riverway.

Mr. Willett stated he is voting for this rule because the process has been inclusive and extensive. Nothing is perfect situation. It is a unique waterway that needs to be protected. This rule recognizes the uniqueness of this waterway. He hopes NR 115 isn't a mirror image of this rule because it's much broader. He would like to see the language changed from non-conforming to pre-existing.

Mr. Behnke agreed with Mr. Willett, but he has a problem with the part that doesn't allow the replacement of a foundation. The foundation is more important than any other construction of the house. Can we change that part?

Mr. Behnke MOVED, seconded by Mr. Poulson amend that if reconstruction is permitted the replacement or reconstruction of the foundation should be allowed.

Mr. O'Brien stated he agreed with Mr. Behnke. If we are allowing them to build a new structure, the foundation should be included. If the house is there, we shouldn't have to move it back.

Mr. Ela stated he would like clarification on the limitations on the word repair.

Mr. Behnke stated forget about the word repair because if you can replace the structure, then you can repair or replace the foundation as necessary.

Mr. Willett stated attempting to preserve the concept of non-conforming because there is a sense phasing out the structure. This is a paradigm shift.

Mr. Ela stated we need a distinction between lots where there is a conforming location for the structure to be relocated versus a lot where there is no conforming location.

Mr. Behnke asked doesn't the building permit decide that.

Mr. Willett stated he thinks that this law will change that.

The motion was carried with a vote of 6-1, Mr. Ela voting no. The amendment passes.

Ms. Thomas asked about the elevation versus ordinary high water mark. Why isn't it better to have one elevation for both sides of the river?

Scott Humrickouse, Director, West Central Region stated that Minnesota has historically based setbacks on a 675' elevation from sea level. In Wisconsin, we use ordinary high water mark on a site-specific basis. The basis of setbacks is further. The issue is people don't like the inconsistency. It is consistent with the rest of the state. The process has begun to establish an ordinary high water mark is on Lake St. Croix.

Mr. Welter stated that Mr. Darnold suggested revisions for boundaries of the management area. He suggested that Mallalieu Drive and Meyer Road should be used as the boundaries.

Mr. Welter MOVED, seconded by Mr. Willett to amend to adjust the North boundary on the river town line within the city of Hudson to be the corporate limit line between the City of Hudson and the village of North Hudson and the South boundary line be the section line rather than Meyer road extended. The motion passed unanimously.

Richard Lindholm, Town of Troy stated we live there. How can you arbitrarily move without more data and looking at a plat map what affect that will have on the residents.

Mr. Ela MOVED, seconded by Mr. Poulson voted to reconsider the amendment. The motion passed unanimously.

Mr. Rolly stated that we need to public notice if it affects the zoning. Housekeeping as long it doesn't affect more residents.

Frances Ogden stated section line will work fine stated there are a number of little details that need to be given to the staff.

Mr. Welter MOVED, seconded by Mr. Willett to change the boundary to the North Boundary of River Town instead of Mallalieu Drive. The section line would be a more appropriate South Boundary.

Mr. Poulson said we don't want to affect more people that may live on one side or the other of the boundary.

Mr. Lindholm stated current boundary line between Town of Troy and the City of Hudson.

Mr. Welter MOVED, seconded by Mr. Willett to amend the south boundary line of Hudson to be the corporate line between the Town of Troy and the City of Hudson. The motion carried unanimously.

Mr. Ambs stated that there are significant constitutional challenges allowing someone to build all the way down to and including the foundation. The practical consequence of the Board action is that it basically eliminates setbacks of any sort.

Mr. Willett asked why would he think that.

Mr. Rasmussen stated because that's way the rule is structured for non-conforming uses under the portion that states reconstruction of non-conforming structures. There are no setback provisions in there.

Mr. Willett stated the intent is the foundation is reconstructed exactly where it was.

Mr. Rasmussen stated that there are water quality concerns because you are digging and excavating a new foundation you must dig around the structure, not just in the foundation footprint. Too close to the river is too close the river.

Mr. O'Brien stated that in the original presentation you stated the reason you weren't allowing the foundation to be reconstructed was because you eventually want the structures moved back 200 feet. You never mentioned the concern of digging out the riverbank.

Ms. Thomas stated she doesn't see constitutional issues as philosophical issues. She sees them as legal issues. What is the constitutional issue about whether you can replace the foundation or not.

Mr. Willett stated that the Department wants those structures removed. If they pre-exist, they are not going to be removed.

Ms. Penner stated we are allowing a lot of rebuilding of non-conforming structures. We are trying to allow for remodeling and updates to homes. If you want to build an entirely new structure, the law says you should build it in a conforming location.

Mr. Willett stated because it's pre-existing.

Ms. Thomas stated she agreed when you began today because of zoning laws. The original legislation that created the Wild and Scenic St. Croix Riverway stated that the structures don't need to go away.

Mr. Ambs stated that is where the Wisconsin Public Trust Doctrine comes in. The law says the end result is non-conforming structures need to go away. Can we legally draft language that says you can rebuild right down to the foundation? Under Wisconsin case law and the constitution, the answer is no.

Mr. Behnke requested a vote.

Mr. Ela MOVED, seconded by Mr. Welter to amend the motion to retain the prohibition of reconstruction of a new foundation if the foundation is within 50 ft of ordinary high water mark or any part is on a slope preservation zone.

Mr. Ela stated that this seemed like a fair compromise, as it would allow many property owners to construct a new foundation while still protecting impacts on water quality as is required under the public trust doctrine.

Mr. Behnke stated he doesn't think this amendment adds anything that hasn't been addressed already. He is going to vote against it.

Mr. Willett said he will vote for it, but he disagrees with it because of the public trust doctrine. The Department feels strongly that 50 feet within that area, so he will vote for it.

A roll call vote was taken.

Gerald O'Brien-No Howard Poulson – No

Jonathan Ela – Yes Herb Behnke - No

Christine Thomas – Yes John Welter – Yes

Steve Willett – Yes

The motion carried with a 4-3 vote.

Mr. Behnke MOVED, seconded by Mr. Ela approval of adoption of revisions of Ch. NR 118, WI Adm. Code, standards and criteria for the Lower St. Croix National Scenic Riverway, as amended. The motion carried unanimously.

3.A.5 Adoption of Board Order RR-07-04, revisions to NR 168 related to Brownfields Site Assessment Grant Program

Darsi Foss, Section Chief, Brownfields, Bureau of Remediation and Redevelopment requested final adoption of the Brownfields Site Assessment. There were less than a handful of comments at the public hearing. The grant program totals \$1.7 million a year for local governments intending to jump-start the reuse of contaminated properties. Many properties aren't eligible for commerce money because they don't have a developer in hand. Some of the money goes to pay for demolition and investigation for clean up. We have had a record number of applications this year.

Mr. Ela asked where does the grant money come from.

Ms. Foss stated from the environmental fund.

Mr. Willett MOVED, seconded by Mr. Poulson to approve the adoption of Board Order RR-07-04, revisions to NR 168 related to Brownfields Site Assessment Grant Program. The motion was approved by all members.

- 3.A.6 Request authorization for hearing for revisions of NR 809 pertaining to reporting of analytical results and returning to compliance for a nitrate violation.

Don Swailes, Section Chief, Drinking Water Quality, Bureau of Drinking and Ground Water requested authorization for hearing for revisions to NR 809. The changes requested by the Department will clarify the procedures for determining compliance with the MCL for nitrate, nitrite, and combined nitrate and nitrate. The revisions will apply to all public drinking water systems in the state.

Mr. Willett MOVED, seconded by Mr. Poulson approval of request authorization for hearing for revisions of NR 809 pertaining to reporting of analytical results and returning to compliance for a nitrate violation. The motion was approved by all members.

- 3.A.7. Request authorization for public hearing on NR 198 Aquatic Invasive Species Control Grant
Carroll Schaal, Lakes Team Leader, Fisheries Management and Habitat Protection Bureau requested authorization for public hearing on revisions to NR 198. The rule directs the Department to promulgate rules to establish a procedure to award cost-sharing grants to units of local government for up to 50% of the costs of projects to control aquatic invasive species.

Mr. Willett MOVED, seconded by Mr. Poulson approval of request authorization for public hearing on NR 198 Aquatic Invasive Species Control Grant. The motion was approved by all members.

- 3.A.8. Request authorization for public hearing for Board Order FH-36-04, revising NR 1 related to Waters Designations.

Mary Ellen Vollbrecht, Section Chief, Rivers and Habitat Protection, Fisheries Management and Habitat Protection Bureau stated the purpose of this rule is to establish policy guiding the department's actions as a trustee of public waters and to set the process the department will follow when determining waters to be area of special natural resource interest, waters or portions thereof containing public rights features and priority navigable waters.

- 3.A.9 Request authorization for public hearing for Board Order FH-37-04 repealing NR 322, revising NR 300 and creating NR 310, related to Time Limits and Procedures for Waterway Permits.

Ms. Vollbrecht stated this action amends rules requiring the Department to establish time limits and fees for waterway and wetland permit decisions to bring those rules into compliance with new statutory requirements, and creates a rule to establish procedures for processing exemptions, general permits, and individual permits, issuing public notices, and conducting hearings for individual permits as authorized under Ch. 30.

- 3.A.10 Request authorization for public hearing for Board Order FH-40-04, repealing and recreating NR 323 related to Fish and Wildlife Habitat Structures in Navigable Waterways.

Mary Ellen Vollbrecht stated the purpose of this rule is to establish construction, design and placement standards for projects to be eligible for statutory exemptions, establish general permits, and establish standards for projects that may be authorized under individual permits. NR 323 defines and describes design standards for half a dozen commonly used fish habitat structures that would qualify for exemptions in all waters other than "areas of special natural resources interest" (ASNRIs) and establishes general permits for those same projects in ASNRIs.

- 3.A.11. Request authorization for public hearing for Board Order FH-41-04, revising NR 325 related to Fixed Houseboats and Boathouses in Navigable Waterways.

Mary Ellen Vollbrecht stated the purpose of this rule revision is to modify the existing rule to reflect the exceptions. This rule revision establishes standards and clarifies procedures for obtaining certification of boathouse repair or eligibility for a statutory exception. This order makes

some minor changes to existing NR325 to bring into accordance with the provisions of Act 118 allowing an exception to the limits on over-water boathouses for some commercial boat houses.

3.A.12. Request authorization for public hearing for Board Order FH-44-04, creating NR 329 related to Miscellaneous Structures in Navigable Waterways.

Mary Ellen Vollbrecht stated the purpose of this rule is to establish construction, design and placement standards for projects to be eligible for statutory exemptions, to establish general permits with appropriate conditions, and to establish standards for projects that may be authorized under an individual permit. Chapter NR 329 establishes standards for exemptions for dry fire hydrants, intake and outfall structures, and piling. Exemptions are not allowed in ASNRIs and must follow technical standards similar to those previously used for short form permits.

Todd Ambs, Administrator, Division of Water requested authorization for public hearing for revisions to NR 1. He stated the five rules before the Board today are the same emergency rules proposed as a draft to go out for public hearing for the permanent rule process. We would like to get the permanent rules in place before the next construction season.

Mr. O'Brien asked public hearings procedure.

Mr. Ambs stated everyone who would like to be heard at a public hearing has the opportunity. For emergency rules, the procedure is expedited to get the rule in place as soon as possible. Typically there is only one hearing and it is in Madison. Emergency rules should be the exception rather than the rule because you don't get the public comment like we get during permanent rule making process.

Mr. Behnke stated a public hearing always follows the emergency rule where the public can express themselves.

Ms. Vollbrecht stated as of May 20, 2004 there have been 139 requests for exemption determinations.

Mr. Ela asked if the lake sensitive areas have already been inventoried

Ms. Vollbrecht stated yes,

Mr. O'Brien asked if piers and other structures are grandfathered in if they don't conform to the new rules.

Ms. Vollbrecht stated there is a general permit for pre-existing piers. Since 1969 there has been legislation to eliminate over water boathouses. There is a 50% rule.

Mr. Willett asked about the tie between legacy lands and these rules.

Ms. Vollbrecht stated there were existing lists and extensive data about natural features.

Ms. Thomas MOVED, seconded by Mr. Welter approval of request authorization for public hearing on request authorization for public hearing for Board Order FH-36-04, revising NR 1 related to Waters Designations; Board Order FH-37-04 repealing NR 322, revising NR 300 and creating NR 310, related to Time Limits and Procedures for Waterway Permits; Board Order FH-40-04, repealing and recreating NR 323 related to Fish and Wildlife Habitat Structures in Navigable Waterways; Board Order FH-41-04, revising NR 325 related to Fixed Houseboats and Boathouses in Navigable Waterways; Board Order FH-44-04, creating NR 329 related to Miscellaneous Structures in Navigable Waterways. The motion was approved by all members.

3.B. Land, Management Recreation and Fisheries/Wildlife Committee.

3.B.1 Minutes. There were no Committee minutes for April 2004 since all agenda items were taken up during the Full Board Meeting.

3.B.2. Adoption of wildlife rule changes resulting from the 2004 Spring Fish and Wildlife Hearing.

Tom Hauge stated these are the annual rule regulation changes that you see every year. We are bringing forward those regulation changes that received public support at the spring hearings. The regulation changes, except for one proposal, were overwhelming supported. There was a proposal about authorizing the use of dogs for fall turkey hunting. That is a proposal that failed again at the spring hearings.

Mr. Willett stated he voted against it because he knows nothing about it. He asked what kind of dog is used to hunt turkeys.

Mr. Hauge stated the citizen appearance will be able to answer that question better, but I have seen a type of terrier or spaniel.

Scott Slajus, Wausau, Regional Director of National Wild Turkey Federation explained how to hunt turkeys with dogs. The fall turkey hunt using dogs is different than any other hunting birds with dogs. There is a specialized training for the dog. The dog finds and flushes the flock of turkeys. Then it requires the hunter to call the dog in quietly. The dog climbs into a camouflage bag and then the hunter calls the turkeys back in. The dog is not used to flush the turkeys to shoot on the wing. There are several different types of dogs used including a Labrador retriever because they are very obedient.

Mr. Willett MOVED, seconded by Mr. Behnke approval of Adoption of wildlife rule changes resulting from the 2004 Spring Fish and Wildlife Hearing.

Mr. Willett stated the public needs to be educated about hunting turkeys with dogs.

Ms. Thomas asked if you can train your dog to do this even though we don't have an opportunity to actually do it.

Mr. Hauge stated as long as you train without a gun.

Ms. Thomas stated she is excited about this. This is another opportunity for hunters to enjoy Wisconsin's natural resources and for them to do things with their dogs.

Mr. Behnke stated he agrees with Ms. Thomas would like to see it passed.

Mr. Welter asked what do other states do. Do they harvest more birds with dogs?

Mr. Slajus stated in other states, it has just become part of the fall hunt and he's not sure if there has been research done on that.

Mr. Behnke asked Mr. Hauge if there is a way we could put the spotlight on this type of hunting at a public hearing, rather than put it in the maze of items going through the spring hearings. He stated he would like to see this go out to public hearing.

Mr. Hauge stated that for other matters we have gone the special hearing route.

Mr. Ela stated this type of issue is exactly what the Conservation Congress is for. Let's not second-guess the congress.

The motion was approved by all members.

3.B.3. Adoption of proposed fishing regulation changes resulting from the 2004 Spring Fish and Wildlife Hearing.

Steve Hewett, Section Chief, Fisheries Policy and Operations, Fisheries Management and Habitat Protection Bureau stated the Department recommends that the Board adopt Order FH-03-04, proposed rule revisions from the 2004 Spring Fish and Wildlife Hearings with exception of the three fish refuges that were rejected at the local Lincoln County vote.

Mr. Behnke MOVED, seconded by Mr. Ela approval of adoption of proposed fishing regulation changes resulting from the 2004 Spring Fish and Wildlife Hearing. The motion was approved by all members.

3.B.4. Adoption of Emergency rule order WM-35-04(E) relating to NR 10 and NR 19 Baiting and Feeding of Wildlife.

Tom Hauge stated that DATCP issued a press release that stated there was another CWD positive deer on a deer farm in Racine County. Racine County is already in the baiting and feeding ban. The deer farm is located within 10 miles of Milwaukee County, which is currently not in the ban. The new emergency order is required to continue the ban on the placement of feed for deer in those areas at highest risk for CWD, and meet the requirements to ban baiting and feeding in these counties as established in 2003 Wisconsin Act 240. He explained on one may place more than one feeding site for each owner-occupied residence or business and the feeding site may not contain more than 2 gallons of feeding material. The site must also be within 50 yards of any owner occupied residence or business. He outlined some scenarios about baiting and feeding site placements.

Ms. Thomas asked if he was going to explain how the scenarios play out on public lands.

Mr. Hauge stated when you are on public lands no one knows where the 40 acre plots are. This is going to be a challenge for the enforcement staff.

Ms. Thomas stated she is concerned about spreading urine collected from game farms where CWD may be present and allowing it to be spread in the Northwoods.

Mr. Hauge stated we haven't determined if CWD spreads that way.

Ms. Thomas asked if it is spread through fecal matter.

Mr. Hauge stated he is not sure, but there has been research that may support the spread through fecal matter.

Mr. Ela stated the fundamental premise has been to take a conservative approach to this issue.

Mr. Hauge stated the prion hasn't been detected in urine, so there's no scientific basis for banning it.

Mr. Ela stated that animals put in pens where infected animals have been and then a healthy animal is infected. That could be because of urine.

Mr. Behnke asked if the Department could put any possible CWD suspects, such as urine into the emergency rule.

Mr. Hauge stated we could, but we don't know if would survive the legislative process. If the Department felt this was a possible way of disease transmission, we would ban it.

Mr. Ela stated in the absence of knowledge about urine transmission, we have to ask what is the possibility there.

Mr. Hauge stated the Department has scientific justification for saliva and fecal matter, but not for urine. If we thought it was in urine we would ban it.

Mr. O'Brien asked as a gun hunter could I start baiting during bow season.

Mr. Hauge stated it is for any open season

Mr. Welter asked if the emergency rule could be renewed before it expires.

Mr. Hauge stated it could be renewed for two 60-day extensions. He asked the Board if they would like to see the urine issue researched for the permanent rule process.

Mr. Poulson stated for the permanent rule we need to be sure that we are right about it.

Mr. Ela stated we could amend the permanent rule if there is evidence that urine is a factor in disease transmission.

Mr. Behnke MOVED, seconded by Mr. Welter approval of adoption of emergency rule order WM-35-04(E) relating to NR 10 and NR 19 Baiting and Feeding of Wildlife. The motion was approved by all members.

3.B.5. Request authorization for public hearing to establish the 2004 migratory game bird season.

Kent Van Horn, Migratory Bird Staff Specialist, Wildlife Bureau stated migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service regulatory process under international treaty and federal law. In order to meet the federal time frames, we are requesting the authorization for public hearings now.

Mr. Behnke MOVED, seconded by Ms. Thomas approval of request authorization for public hearing to establish the 2004 migratory game bird season. The motion was approved by all members.

3.B.6. Deferred to June Meeting ~~INFORMATION ITEM — Greater Prairie Chicken Research Results (Keith Warnke, DNR, John Toepfer and Peter Dunn, Society of Tympanuchus Cupido Pinnatus, 30 Minutes)~~

3.B.7. Whitefish Dunes State Park, land acquisition, Door County.

Mr. Behnke MOVED, seconded by Ms. Thomas approval of Whitefish Dunes State Park land acquisition, Door County. The motion was approved by all members.

3.B.8. Western Prairie Habitat Restoration land acquisition, St. Croix County.

Mr. Behnke MOVED, seconded by Mr. Poulson approval of Western Prairie Habitat Restoration land acquisition, St. Croix County. The motion was approved by all members.

3.B.9. Ice Age Trail land acquisition, Waushara County.

Mr. Ela MOVED, seconded by Mr. Welter approval of Ice Age Trail land acquisition, Waushara County. The motion was approved by all members.

3.B.10. Pine River System Fishery Area land acquisition and project boundary modification, Waushara County.

Mr. Welter MOVED, seconded by Mr. Ela approval of Pine River System Fishery Area land acquisition and project boundary modification, Waushara County. The motion was approved by all members.

4. Committee of the Whole.

4.A. Citizen Participation (1:00 p.m.)

Bill Liebert, Rhinelander, asked what method of public notice does the department need to publish in order to hold a staff meeting to discuss an agenda. He would like help with the related open records request from Oneida County Planning & Zoning Committee which was made sometime ago. He would also to know why the rules passed on April 6, 2004 were considered an emergency.

George Lonsdors, Merrill, representing himself stated he would like to change the image of the DNR. He was required to build a diversion ditch and settlement pond that cost him \$20,000 for a subdivision he developed on his farm. He would like to prevent others from having to go through the same experience he did. He feels the Department staff doesn't use common sense.

Steve Oestreicher stated there were 31 congress advisory questions at the spring conservation congress meeting. Question 48 selling deer licenses during open firearms season, and question 54 to increase the inland trout stamp to \$10 per year were rejected.

Ed Harvey stated that question 66 on non-resident trapping was also rejected. Question 67 dealing with bobcat season being extended to Jan. 31st.

Mr. Oestreicher asked that the Department carefully evaluate all congress advisory questions for possible proposed rule change questions for next year's spring hearing process. At yesterday's executive council meeting there was a lengthy discussion on a resolution regarding Lower St. Croix Riverway master plan proposal. Some of the proposed rule changes will affect several user groups of the river. We believe that by design sportsmen groups and organized voting groups were not allowed membership on this partnership team. There is no conservation congress membership on this team. We ask that the Department not move forward until sportsmen groups and the congress are represented on this team.

Scott Humrickhouse stated the resolution is 95% inaccurate. There is a Lower St. Croix Partnership Team, but they don't have final decision making authority on anything, much less rule making. There is no rule making underway. There is no intentional effort to exclude anybody. He will deal with Mr. Oestreicher about this resolution.

Mr. Oestreicher stated executive committee will be selecting committee members.

4.B. INFORMATION ITEM - Impacts of Mercury and Environmental Stressors on Common Loons.

Jack Sullivan, Director, Bureau of Integrated Science Services stated one of the roles of the Bureau is to look across the landscape and predict emerging environmental stressors and provide timely information regarding their environmental impact.

Mike Meyer, Wildlife Biologist, Bureau of Integrated Science Service stated that the Department along with USGS, USEPA and UW are conducting field studies to evaluate the risks that mercury exposure and lake shoreland development pose to the common loon population in Northern Wisconsin. This region has many lakes with high acidic levels which also have high levels of Mercury. The goal of the project is to conduct research on Wisconsin Loon using Population Viability Analysis (PVA) to determine current risks of mercury exposure, shoreland habitat loss, human disturbance on long-term breeding loon population. The preliminary findings are there were no major toxicological effects. In addition, there were no reductions in survival, growth, or behavioral effects related to mercury. However, chicks from low-pH lakes have behavioral alterations (thermoregulation, response to parental calls) higher blood Hg levels at hatch, 3.8% lower hatch mass, 7 % lower asymptotic mass, more severe physiological effects, and suggestion of more depressed immune function than chicks from neutral-pH lakes. We can only speculate

that the lake source effect may have been related to in ovo exposure to MeHg. The disappearance of loon breeding habitat is affecting loon populations. Many new housing developments on lakes are growing lawns all the way down to the shore.

Mr. Willett stated he doesn't see that. He believes there is a buffer on most lakes.

Dr. Meyer stated this is on new developments and he would provide photos to the Board. Breeding range of common loons in Wisconsin has been reduced and is now restricted to lakes in northern 1/3 of state. Preliminary population modeling indicates current productivity is lower than required to maintain a stable population. Our previous research shows that lakeshore development in northern Wisconsin has resulted in significant alteration of shoreland vegetation, a decrease in breeding green frogs, and changes in breeding bird composition. Loons require undisturbed shoreland areas for nesting. Wisconsin loons are more likely found on undeveloped lakes however some pairs still attempt to nest on highly developed lakes. Habitat modeling will be complete in 2005.

Mr. Willett stated the Board started looking at mitigation after studying Burnett County. We were concerned about lake development. Is the buffer zone of 50 feet sufficient to increase loon reproduction? and how big of a lake do you need?

Dr. Meyer stated yes shoreline buffer is critical and lakes need to be 2500 acres.

Ms. Thomas asked if mercury is in the sediments like phosphorus. What is the prognosis?

Dr. Meyer stated there are studies to determine what changes mercury in lakes. Results will be available in 3-4 years.

4.C. Retirement Resolutions.

4.C.1. Allan Nordstrom

4.C.2. Shelby McKenzie

4.C.3. Gregory C. Samp

4.C.4. Phillip F. Anderson

Mr. Behnke MOVED, seconded by Mr. Poulson approve the retirement resolutions. The motion was carried unanimously by all members.

5. Board Members' Matters.

5.A. INFORMATION ITEM - Green Tier Law Update.

Mark McDermid Director, Cooperative Environmental Assistance Bureau stated the Green Tier law is the "good actor law" that Gov. Doyle called for in the Grow Wisconsin initiative. The two tiers or levels, within Green Tier build on voluntary environmental performance that exceeds existing standards. The program provides recognition and incentives for participation, and strives to lower overall transaction costs associated with environmental performance. Tier 1 is an entry level. Tier 2 involves more rigorous participation requirements, places greater emphasis on superior environmental performance and uses contracts as a means of giving customized regulatory flexibility proportional to performance.

John Piotrowski, Packaging Corporation of America stated in 1998, the EPA issued emissions rule that required pulp and paper companies to comply with a certain technology prescription that required the control of certain kinds of hazardous air pollutants. When we implemented the project we identified an alternative control approach that would be less expensive to install and further reduce emissions by more than 600% over and above what the EPA allowed.

Mr. Ela stated he asked for how this law is going to work. It can be in writing, but he wants it to be systematic and non-rhetorical and comprehensive about how this program works and what the statute does. He doesn't want to read any more how this is the best thing since sliced bread.

5.B. INFORMATION ITEM - "catch and release" trout regulations statewide and follow up information regarding Pine-Melancthon creeks.

Larry Claggett, Coldwater Fisheries Ecologist, Fisheries Management and Habitat Protection Bureau stated at the April Board meeting, John Slaney and Maynard Hewuse made citizen appearances and expressed concern about the catch-and-release trout regulations on the Pine River and Melancthon Creek in Richland County. They would like the catch-and-release regulations changed to category 2 (5 bag limit, 7" size limit) or category 3 (3 bag limit, 9" size limit). Catch-and-release regulations are used for three main reasons: to protect unique or recovering stocks of

trout that could be damaged by harvest, to increase catch rates for anglers, and to increase the number of large trout for anglers to catch. The increase in catch-and-release in 2003 is largely the result of knowledge and desire to protect unique or recovering stocks of brook trout in small streams and springs. Such is the case for Melancthon Creek.

Mr. Welter asked when is the next overall review of the trout regulations.

Mr. Claggett stated we make a commitment not to change the regulations very often because we could get carried away and change them all the time. We try to stay on a 5 years cycle.

Mr. Welter asked if one of the justifications for a catch and release regulation the protection of root stock populations.

Mr. Claggett stated yes.

Scott Stewart, Fisheries Biologist, South Central Region explained the trout population on Melancthon Creek and Pine River. The Department recommends that these two regulations be forwarded to both the Trout Committee of the Conservation Congress and the Trout Committee within the DNR for comment. Both groups are scheduled to meet in the fall. In the meantime, we will ask the fish manager to complete fisheries and temperature surveys for Melancthon Creek during the summer of 2004 and submit a report to both committees for their fall meetings.

Mr. Behnke asked if the recommendation be done for the 2005 season.

Mr. Stewart stated no it will be implemented into the Conservation Congress process in spring 2005 and implemented in 2006.

Mr. Behnke stated the Board could direct the Department to hold a special public hearing to implement it in 2005 season.

Mr. Stewart stated that's what the public wants.

Mr. O'Brien stated that then it wouldn't go through Congress.

Mr. Behnke stated the trout committee would be involved in a meeting this fall and so would the people within the Department. They could come to the Board with their findings.

Mr. Welter asked if the Department is doing survey work this summer. Compared to the Fall of 2003, what do you think you will learn from the survey?

Mr. Stewart stated there are not any brook trout data to examine. We need to get the fish and temperature data first.

Mr. Welter asked if we will be facing a number of other situations in Southwest Wisconsin where there have been catch and release regulations implemented where we don't have the data to know why they were adopted in the first place.

Mr. Stewart stated these are two we are hearing the most about from the public. That doesn't mean we won't hear about others. That is the danger of having a special hearing. As far as the data, we will be trying to fill in any gaps in the other systems so we have numbers to talk about.

Mr. Welter asked if the Department will be ready to discuss alternate regulations.

Mr. Stewart stated yes.

Mr. Behnke asked if this will be ready for December meeting.

Mr. Stewart stated yes.

Tim Andryk, DNR Attorney stated the legislature isn't in session this fall, so if you want it to be in effect by next season, it would have to be adopted by the August Board meeting, which means it would have to be authorized for public hearing at the June Board meeting.

John Slaney, Merrimac, representing himself expressed his concern about the lack of data on the fish population in Pine Creek. He believes the regulations were set without any recent data. He recommends for 2005 season, Methancton Creek have category 3 regulation and Pine Creek have category 4 regulations. He is flexible about which category each creek has. He has 300+ signatures regarding the dissatisfaction with the trout regulations.

Roger Kerr stated he was the fish manager for these streams from 1972-1992. He then became a land agent for the DNR and retired two years ago. He explained that all of the angry people on Methancton and Pine Creeks are his customers. That is one of his interests, along with having good fish management in Southwest Wisconsin.

Mr. Behnke asked what is Mr. Kerr's suggestion to get the regulations changed.

Mr. Kerr stated he isn't an expert of the regulation change procedures.

Mr. Welter asked how much in public easement or ownership in the Methancton Creek area.

Mr. Kerr stated about 10-15%.

Mr. Behnke asked Mr. Andryk how can we speed this process up.

Mr. Andryk stated the rule proposal would have to be at next meeting, public hearings in July, and the Board would have to adopt the rule at the August Meeting.

Mr. Behnke requested that the Department come to the Board with a concrete recommendation by the next board meeting about how to speed up this process.

Ms. Thomas asked the fishery staff if there is no possible way to damage the population.

Mr. Claggett stated the population won't disappear, but the rootstock may be affected. I recommend some sort of protection beyond 9 inches so we can collect those fish for rootstock.

Mr. Stewart recommended 9 inches Brook Trout for Methanchton Creek and we could watch it carefully and if we see danger signs, we can get more restrictive on it again. He recommends 12 inches for the Pine River.

Mr. Behnke MOVED, seconded by Ms. Thomas the department staff meet with citizens who filed the complaint on the current regulation and come to some kind of recommendation to bring before the Board at the June meeting.

Mr. Welter amended motion to trout study committee and county delegates are involved in the discussions. The motion was carried unanimously by all members.

5.C. INFORMATION ITEM – Wolf Depredation – Fornengo Farm.

Laurie Osterndorf, Administrator, Division of Land stated the Department is currently drafting a rule on wolf depredation. In December 2003, the Department indicated they would continue to follow the current policy until the new rule is passed. The current policy was passed by the Board several years ago and pays for verified losses, which is consistent with practices in the rest of the country. For the 2002 season, the Department has paid the Fornengo Ranch \$15,000. She explained the Fornengo Farm Wolf Consumption Model handout.

Mr. Willett asked if the Board needs to take action.

Ms. Osterndorf stated it is only an information item. Fornengo farm said they lost 71 calves. Wildlife Services said they lost 24 calves. The question is how many unverified calves will we pay for.

Mr. O'Brien asked for clarification about the number of packs in the area of the Fornengo Farm. He said that the Department staff said there was only one pack and now the Department is saying there is four packs.

Signe Holtz, Director, Endangered Resources Bureau stated the year before there was only one pack. Because we removed several wolves from the pack, it allowed other packs to move in.

Mr. O'Brien asked how many adult wolves are in a pack.

Ms. Osterndorf stated there are 3-4 adult wolves per pack.

Mr. O'Brien stated that when we visited the farm, there was a person from the UW and the Veterinarian who showed us figures that three years prior. The Fornengos lost approximately 5% of their calves. The last two year, they have lost 20% of their calves. There is no way to verify it because the wolf eats everything.

Mr. Behnke stated we aren't getting to the root of the problem. We are only getting equations. We need an outside survey from a veterinarian or Wildlife Services people to determine what is the normal survival rate of calves. Beyond that we need to determine what to do with the missing animals.

Ms. Osterndorf stated we need a model that works. We have representatives from the agricultural community that are helping draft the rules.

Mr. Behnke stated that doesn't help the Fornengo Farm. They are losing 70+ calves.

Mr. O'Brien stated that when he and Mr. Behnke visited the ranch, they found it was a well-run ranch. They have 1200 acres. How can you find all the calves that are missing in a 1200-acre plot. The calves are tagged when they are born, but they are missing when the cattle are brought in for the winter. How can you verify losses when there isn't anything left of the calf? The wolves eat the entire calf.

Mr. Behnke asked why aren't we taking the verification of the veterinarian who services that ranch.

Ms. Osterndorf stated we haven't made a determination that we would not accept the veterinarian's verification. He's unavailable right now because it's calving season. There are tools that help ranchers such as Wildlife Services. WS can euthanize the wolves if the ranchers call them. In 2003, the Fornengos only called WS twice.

Mr. Poulson asked how do we disrupt the pack system.

Ms. Holtz stated that in 2000-01 the farm was centered in the wolves' territory, so it was defending the area from other packs. Once the pack was disrupted the structure three other packs were able to reestablish territory around the farm.

Mr. Behnke stated WS told us there were approximately 30 wolves in the area.

Ms. Osterndorf stated our recommendation is to pay for 21 unverified calves and 24 verified calves.

Ms. Thomas asked what about using shock collars on wolves.

Ms. Holtz stated it worked for one year, but you have to continue to trap wolves.

Other Board Member Matters

Mr. Behnke stated he suggests the public trust video be made part of the hunter safety course. He also requested that the new board members receive copies of the video.

Mr. Ela stated during our discussion last month on invasive species somebody asked about the Mute Swan. We were told that the control measures had been suspended because of a law case. Since then we have received a more detailed explanation of that. There are other undesirable species involved in that lawsuit as well. He thinks the Board should go on record urging the Congress to pass legislation to exclude these species from the provisions of the Migratory Bird Treaty. He suggests the staff come up with resolution text for consideration at the next meeting. His second issue is MMSD. Clearly, the system is not working. The Department and Board must take a leadership stance about it. He asked the staff to work with Board to develop systematic way to be involved to find short and long-term solutions.

Mr. Willett asked for clarification about exactly what issue.

Mr. Ela stated the overflow.

Ms. Thomas asked if it was our responsibility.

Mr. Ela stated that as the body charged with overseeing natural resource policy in the state we have an obligation to assist in the solution of this problem.

Mr. Willett stated they are fighting among themselves about how to raise funds to operate. One says it should be based on property tax versus based on use.

Mr. Poulson stated he received a second letter from land lock issue in Marquette County. Secondly, he would like to receive a report on the Discovery Farms.

6. Special Committees' Reports None.

7. Department Secretary's Matters.

7.A. AWARD - Shikar Safari Club International Recipient.

John Pierson stated the Shikar Safari Club is 55-year-old conservation and hunting club. The last 35 years we have presented to each state in the union and provinces this award. Ron Cork is the recipient of this year's Wildlife Officer of the Year Award.

7.B. DONATION - \$9,999.00 from anonymous donor to go to the State Game Farm for Fall 2004 pheasant release on public hunting grounds.

7.C. DONATION - \$8,000 from Whitetails Unlimited for habitat maintenance in Hoffman/Hay Creek Wildlife Area and Flambeau River State Forest.

7.D. DONATION - \$28,500 from Wisconsin Power and Light Company required by Article 408 of the Federal Energy Regulatory Commission for enhancement of fish and aquatic resources.

7.E. DONATION - \$7,500 from the Walleyes for Tomorrow to be used to support the walleye restoration project. ADDED

Mr. Poulson MOVED, seconded by Ms. Behnke approved all donations for June. The motion was carried unanimously by all members.

Duke Welter was appointed to the vacancy on the land committee.

The meeting adjourned at 5:30 p.m.